

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LIBERTY SYNERGISTICS, INC.,

Plaintiff,

MEMORANDUM
OPINION AND ORDER

-against-

CV 11-523 (ETB)

MICROFLO, LTD., EDWARD MALKIN,
ECOTECH LIMITED, a Cayman Islands Company,
and DOES 1 through 20, inclusive,

Defendants.
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By letter application dated July 18, 2012, the defendants, Microflo, Ltd., Edward Malkin, and Ecotech Limited, request clarification of the order of the undersigned dated July 18, 2012, which extends discovery to August 31, 2012 limited to new claims and/or defenses raised for the first time arising from the filing of the recently filed (July 17, 2012) complaint (approved on July 18, 2012) and certifying all discovery on the original complaint as complete as of July 6, 2012. See Order of the undersigned dated January 3, 2012. To date, plaintiff has not opposed this application.

The defendant movants now seek to include in the discovery extension responses to defendants' document requests, which admittedly were untimely served on the plaintiff on June 14, 2012. Counsel for defendants asserts that the plaintiff waited until the 29th day after service, and after defendants' counsel had filed his July 13, 2012 letter motion to extend discovery, to notify defendants that plaintiff would not respond due to the fact that the request was untimely served on June 14th and thus did not afford the requisite 30 days to respond, since discovery

terminated on July 6, 2012. See “Plaintiff Liberty Synergistics, Inc.’s Objection to the First Request for the Production of Documents and Things Served by Microflo, Ltd., Edward Malkin, and Ecotech, Ltd. Under Date of June 14, 2012,” annexed to movants’ letter application for clarification dated July 18, 2012.

It would appear that the untimeliness in service of this demand was occasioned by counsel’s good faith belief that the discovery completion set by the undersigned was co-terminus with the date set for the pre-trial conference by the District Judge formerly assigned in this action - July 15, 2012. See Order of Judge Feuerstein dated December 15, 2011; see also Order of the undersigned dated January 3, 2012.

In light of the fact that discovery has now been extended to August 31, 2012, the order dated July 18, 2012 is hereby modified to direct that plaintiff respond to the defendants’ first request for documents served on June 14, 2012. Said response shall be within 10 days from the date of this order.

For the foregoing reasons, the unopposed application for clarification is granted to the extent set forth above.

SO ORDERED.

Dated: Central Islip, New York
August 2, 2012

/s/ E. Thomas Boyle
HON. E. THOMAS BOYLE
United States Magistrate Judge